

**MINUTES
BOARD OF PORT COMMISSIONERS
SAN DIEGO UNIFIED PORT DISTRICT**

The regular meeting of the Board of Port Commissioners of the San Diego Unified Port District was called to order by Chairman Bixler at 1:07 p.m., Tuesday, April 8, 2008, in the Board Room at 3165 Pacific Highway, San Diego, California.

Duane Bennett, Port Attorney, reported on four of the closed session items that were publicly announced on the Board agenda of the 11:00 a.m. special closed session meeting as follows:

Agenda Item 3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Subdivision (a) of Government Code Section 54956.9:

Furgatch v. SDUPD, et al.

San Diego Superior Court No. GIC 775242 and GIC 784923

The Board gave direction and there was no formal or reportable action.

Agenda Item 4.

CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION

Pursuant to Subdivision (c) of Government Code Section 54956.9

One Case

The Board by a 6-0-1 vote (Commissioner Black was absent due to a possible conflict of interest because of an employment relationship with the District's retained counsel) directed the Port Attorney to initiate pre-election litigation challenging The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative (Initiative). The Board directed staff to agendize the matter for the May Board meeting to receive input from the public and to receive legal analysis from independent counsel relative to State pre-emption issues, federal homeland security concerns at the Tenth Avenue Marine Terminal, same subject issues, Coastal Act issues and to receive input as to implications of the Initiative in reference to the Public Trust Doctrine; and to invite proponents of the Initiative to the May Board meeting to participate.

Agenda Item 5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Approximately 30 Acres West of Marina Parkway
and South of G Street, Chula Vista

Negotiating Parties: Bennett Westbrook, Gaylord Entertainment
Randa Coniglio, SDUPD

Under Negotiation: Price and Terms

The Board gave direction and there was no formal or reportable action.

Agenda Item 6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Old Police Headquarters located at the southeast
corner of Pacific Highway and Harbor Drive, and
Seaport Village,
849 W. Harbor Drive, San Diego

Negotiating Parties: Bruce Walton, Seaport Village Operating Co., LLC, by
its Managing Member, Terramar Retail Centers, LLC
Karen Weymann, SDUPD

Under Negotiation: Price and Terms

The Board gave direction and there was no formal or reportable action.

Mr. Bennett concluded his remarks stating that the Board remained in closed session regarding items 7 and 8.

PLEDGE OF ALLEGIANCE

Agenda Item 1. Chairman Bixler led the Pledge of Allegiance.

ROLL CALL

Agenda Item 2.

Present: COMMISSIONERS Bixler, Black, Cushman, Najera, Rios, Spane, and Valderrama;
OFFICERS Hollingsworth, Bennett, Liner, McEntee and Redmon.

Absent: None.

Excused: None.

APPROVAL OF MINUTES

Agenda Item 3. On motion of Commissioner Valderrama, seconded by Commissioner Rios, the Board approved, in a single vote, the minutes submitted for the special and regular meetings of March 4, 2008, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None.

PUBLIC COMMENTS

Agenda Item 4. Lee Wilson, Northrup Grumman Continental Maritime, addressed the Board as a representative of a broad coalition of businesses and organizations, including members of the San Diego Port Tenants Association and the Working Waterfront Group, to announce his opposition to the Initiative that requests the redevelopment of the Tenth Avenue Marine Terminal.

Gary Smith addressed the Board regarding consent agenda item 19, Ordinance Granting Amendment No. 7 to Seaport Village Operating Co., LLC Option Agreement for a 90-Day extension, and requested that the redevelopment of the property be addressed in a timely fashion.

Nancy Graham, President/COO of Centre City Development Corporation (CCDC), addressed the Board regarding item 34, discuss North Embarcadero Visionary Plan Phase One, West Broadway and provide direction to staff. She urged the Board to consider supporting the street improvement recommendation and to remove the hump

on West Broadway. Ms. Graham stated that while she could not share specific details regarding her agency's alternative solutions to offset the additional costs for the project, she was requesting that the Board of Port Commissioners make the necessary budgetary approvals to authorize funding for the removal of the West Broadway hump. Ms. Graham encouraged the agencies to continue working together in a partnership, and to move forward with the completion of all of the expanded Phase One design components. Ms. Graham explained that in the discussions with District staff, she proposed that CCDC would consider the advancement of the necessary funds for completing the construction of all of the various Phase One components, including the cruise ship terminal, and extending favorable loan terms to the District to make financing of the expanded design elements much easier. Ms. Graham requested that the Board consider and make a recommendation regarding the matters she reviewed prior to taking the project and CCDC's budget amendments to the City of San Diego on April 30, 2008.

CONSENT AGENDA

Chairman Bixler stated that Item 10, Resolution Authorizing First Amendment to Agreement with Dudek & Associates, Inc. to provide environmental review consulting services for the completion of the Chula Vista Bayfront Master Plan Environmental Impact Report for an additional \$360,000 and to extend term six (6) months, was pulled for public comment.

Chairman Bixler stated that staff requested that consent agenda items 24-26 and 28 be continued. Chairman Bixler stated that consent agenda item 27 no longer required Board action.

Commissioner Valderrama requested that item 14, Adopting Plans and Specifications and Awarding Contract No. 2005-23 to Rock Electric Inc. for Port-Wide Access Control Systems San Diego and National City, California for an amount not to exceed \$473,347.00, be pulled from the consent agenda.

On motion of Commissioner Valderrama, seconded by Commissioner Najera, the Board, with a single vote, adopted consent agenda items 5, 6, 7, 8, 9, 11, 12, 13, 15A, 15B, 15C, 16, 17, 18, 19, 20, 21, 22, and 23 (**Resolutions 2008-44** through and including **2008-48**; **Resolutions 2008-50** through and including **2008-53**; **Ordinance 2490**; **Resolution 2008-54**, through and including **2008-58**; **Ordinances 2491** through and including **Ordinance 2493**; **Resolution 2008-59** through and including **Resolution 2008-61**) by the following vote: Yeas-Bixler, Black,

Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Agenda Item 5. **Resolution 2008-44**, Proclaiming Support of National Small Business Week, April 21-25, 2008, was adopted as part of the consent agenda.

Agenda Item 6. **Resolution 2008-45**, Selecting and Authorizing Agreement with Novacoast Inc. for Enterprise Wide Identity Management Implementation and Integration Services for an amount not to exceed \$260,000, was adopted as part of the consent agenda.

Agenda Item 7. **Resolution 2008-46**, Authorizing Acceptance of Transportation Security Administration (TSA) Grant Award Modification 17 for the Harbor Police Department (HPD) Explosives Detection Canine Team Program per BPC Policy No. 109, was adopted as part of the consent agenda.

Agenda Item 8. **Resolution 2008-47**, Amending BPC Policy No. 730, the Port Environmental Policy, to clarify language regarding elimination of separate funding for the Tenant Low Interest Loan Program, was adopted as part of the consent agenda.

Agenda Item 9. **Resolution 2008-48**, Approving the Recommendation of the Environmental Committee to allocate \$35,000 from the Environmental Fund to continue the Post-Dredging Recolonization Study in San Diego Bay, was adopted as part of the consent agenda.

Agenda Item 11. **Resolution 2008-50**, Authorizing First Amendment to Agreement with Koa Corporation, formerly Katz Okitsu & Associates, for the North Harbor Drive Realignment Project Increasing the total fee by \$40,000 and extend the term of the agreement to February 1, 2010, was adopted as part of the consent agenda.

Agenda Item 12. **Resolution 2008-51**, Adopting Plans and Specifications and Awarding Contract No. 2007-22 to Southwest Coatings, Inc. for exterior painting, National Distribution Center, National City, California in the amount of \$148,000.00, was adopted as part of the consent agenda.

Agenda Item 13. **Resolution 2008-52**, Adopting Plans and Specifications and Awarding Contract No. 2007-34 to Ensley Electric, Inc. for Tenth Avenue Marine Terminal (TAMT) Security Lighting, Phase III, San Diego, California for an amount not to exceed \$797,000 contingent upon TSA approval to reallocate available grant funding, was adopted as part of the consent agenda.

Agenda Item 15A. **Ordinance 2490**, Authorizing Amendment No. 2 to the Memorandum of Understanding Between the District and City of Imperial Beach, was adopted as part of the consent agenda.

Agenda Item 15B. **Resolution 2008-54**, Adopting Plans and Specifications and Awarding Contract No. 2007-31 to Reyes Construction, Inc. for Palm Avenue Street End Improvements, for an aggregate amount not to exceed \$2,846,204.00, was adopted as part of the consent agenda.

Agenda Item 15C. **Resolution 2008-55**, Authorizing Amendment No. 2 to Agreement with Earth Tech to increase fees by \$88,710.00 for construction support services, was adopted as part of the consent agenda.

Agenda Item 16. **Resolution 2008-56**, Authorizing Change Order No. 2 to Contract No. 2007-07 with Falcon Construction Company for Tenth Avenue Marine Terminal Roll Up Doors and Fire Doors Repair and Replacement in an amount not to exceed \$16,304.00, was adopted as part of the consent agenda.

Agenda Item 17. **Resolution 2008-57**, Authorizing Change Order No. 2 to Contract No. 2007-32 with John Carey Construction Co., Inc. in an amount not to exceed \$16,000.00 and a ten calendar day extension through April 30, 2008, was adopted as part of the consent agenda.

Agenda Item 18. **Resolution 2008-58**, Confirming Executive Director (President/CEO) Appointment of Alan Redmon as Acting Chief Engineer, was adopted as part of the consent agenda.

Agenda Item 19. **Ordinance 2491**, Ordinance Granting Amendment No. 7 to Seaport Village Operating Co., LLC Option Agreement for a 90-Day extension, were adopted as part of the consent agenda.

Agenda Item 20. **Ordinances 2493 and 2492**, Ratifying Board Action of August 8, 2006 Granting Amendment No. 1 to Option Agreement with Fifth Avenue Landing, LLC for the Spinnaker Hotel, was adopted as part of the consent agenda.

Agenda Item 21. **Resolution 2008-59**, Accepting a \$2,240,000 budget for a Tenant Public Artwork Proposal from One Park Boulevard, LLC, as meeting the Public Art Requirement in accordance with BPC Policy No. 609 for the Hilton San Diego Bayfront Hotel, was adopted as part of the consent agenda.

Agenda Item 22. **Resolution 2008-60**, Consenting to Assignment of Sublease from Torrey Point, Inc. dba Pizza by the Bay to Nado Pizza, Inc. dba Village Pizzeria Bayside, was adopted as part of the consent agenda.

Agenda Item 23. **Resolution 2008-61**, Granting Revised Concept Approval for National Steel and Shipbuilding Company's Proposed Bal and K-Lane Construction Projects at its Belt Street Leasehold, was adopted as part of the consent agenda.

Agenda Item 24. **Item Continued**, Establishing Proposed Rent for Harbor Island West Marina, Inc for the Period April 1, 2008 to March 31, 2013.

Agenda Item 25. **Item Continued**, Establishing Proposed Rent for Solar Turbines Incorporated for the Period February 1, 2003 to January 31, 2013.

Agenda Item 26A. **Item Continued**, Sun Harbor Marina: Ordinance Granting Reciprocal Operating and Easement Agreement Among Sun Harbor Marina, Point Loma Marina, LLC and District for Maintenance and Operation of Public Dock Area at 4960 North Harbor Drive.

Agenda Item 26B. **Item Continued**, Sun Harbor Marina: Ordinance Granting Amendment No. 1 to Lease with Sun Harbor Marina to Clarify Rent and Sublease Provisions.

Agenda Item 27. **Board Action No Longer Required**, Resolution Adopting Plans and Specifications and Awarding Contract No. 2007-18 to _____ for Coronado Tidelands Park picnic table replacement, Coronado, California in the amount of \$_____.

Agenda Item 28. **Item Continued**, Resolution Authorizing Agreement with URS Corporation Americas For professional management services for Chula Vista Bayfront Phase I Infrastructure in an amount not to exceed \$_____.

RESOLUTION AUTHORIZING FIRST AMENDMENT TO AGREEMENT WITH DUDEK & ASSOCIATES, INC. TO PROVIDE ENVIRONMENTAL REVIEW CONSULTING SERVICES FOR THE COMPLETION OF THE CHULA VISTA BAYFRONT MASTER PLAN ENVIRONMENTAL IMPACT REPORT FOR AN ADDITIONAL \$360,000 AND TO EXTEND TERM SIX (6) MONTHS

Agenda Item 10. Alexandra Hart, International Brotherhood of Electrical Workers, Local 569, addressed the Board regarding the staff report for consent agenda item 10. She requested clarification regarding the level of reimbursement that the other parties, who were referenced in the staff report, have contributed toward the reimbursement of the expenses related to the preparation of the Environmental Impact Report. Dan Wilkens, Executive Vice President, explained that a three-way agreement between the developers, the City of Chula Vista and the District is on record and it is anticipated that the matter will be revisited at an appropriate time.

On motion of Commissioner Cushman, seconded by Commissioner Najera, the Board approved **Resolution 2008-49**, Authorizing First Amendment to Agreement with Dudek & Associates, Inc. to provide environmental review consulting services for the completion of the Chula Vista Bayfront Master Plan Environmental Impact Report for an additional \$360,000 and to extend term six (6) months, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

RESOLUTION ADOPTING PLANS AND SPECIFICATIONS AND AWARDED CONTRACT NO. 2005-23 TO ROCK ELECTRIC INC. FOR PORT-WIDE ACCESS CONTROL SYSTEM SAN DIEGO AND NATIONAL CITY, CALIFORNIA FOR AN AMOUNT NOT TO EXCEED \$473,347.00

Agenda Item 14. Commissioner Valderrama stated that he was in favor of the staff recommendation, and to ensure a comprehensive security package he requested that the Board direct staff to continue to seek funding for Additive Bid Schedule C in the project.

Bruce Hollingsworth, Executive Director, confirmed with Commissioner Valderrama that his motion included direction to staff to continue seeking funding for Additive Bid Schedule C.

Commissioner Cushman requested and received clarification from Duane Bennett, Port Attorney, that in accordance with the Public Contracts Code it was not possible to award the portion of the project labeled Additive Bid Schedule C to Rock

Electric, even if they agreed to match another proposers lowest bid that may have been submitted for Schedule C.

Mr. Hollingsworth stated that based on the Board discussion, staff would continue with Base Bid Schedule A, Additive Bid Schedule B, and seek to identify funding for Additive Bid Schedule C. Mr. Hollingsworth stated staff would report back to the Board regarding the status of funding for Additive Bid Schedule C.

On motion of Commissioner Cushman, seconded by Commissioner Valderrama, the Board approved **Resolution 2008-53**, Adopting Plans and Specifications and Awarding Contract No. 2005-23 to Rock Electric Inc. for Port-Wide Access Control System San Diego and National City, California for an amount not to exceed \$473,347.00, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

PRESENTATION AGENDA

PRESENTATION OF LIFE SAVING COMMENDATIONS AND MEDALS TO TWO HARBOR POLICE OFFICERS

Agenda Item 29. Chief Kirk Sanfilippo, Harbor Police, Chairman Bixler, and Bruce Hollingsworth, Executive Director presented medals of commendation and shirt bars to Harbor Police Officer Brad Wilke and Harbor Police Corporal Dave Marshall for their life-saving efforts on December 31, 2007. The officers responded to a call of a police pursuit which ended with the male subject's fall from the Coronado Bay Bridge into San Diego Bay. The officers pulled the subject from the bay, which ultimately resulted in the resuscitation of the subject.

Commissioner Najera left the dais at 1:46 p.m. and returned at 1:47 p.m.

PUBLIC HEARING/ACTION AGENDA

SAN DIEGO SYMPHONY

Agenda Item 30AB. Irene McCormack, Director, Communications and Community Services, addressed the Board regarding the San Diego Symphony Tidelands Use and Occupancy Permit, and requested direction to staff regarding a possible 2008 permit. (Copies of the staff report and presentation are on file in the Office of the District Clerk.)

Chairman Bixler opened the public hearing. Chairman Bixler requested and received confirmation from Commissioner Spane that he had not received any comment from the residents of Coronado or the Mayor regarding the 2007 concert series. Chairman Bixler requested and received confirmation from Ms. McCormack that the enhanced hotline service worked well in 2007 and she stated that staff was confident the hotline service would continue to work well in 2008. Chairman Bixler requested and received confirmation from Ms. McCormack that all the contracts for corporate events held on the Tideland properties did include information regarding the music curfew and the maximum dB level.

Commissioner Spane requested and received clarification regarding the type of concert events scheduled for the upcoming season; and if the District had any constraint on the San Diego Symphony (Symphony) for potential subcontracted events other than those included in the Mitigated Negative Declaration. Ms. McCormack confirmed that there were no additional constraints regarding the Symphony and the concerts would primarily be symphonic in nature. She further stated that the Symphony would not feature any performances with artists of a similar musical style or with high dB level such as those programmed by Viejas Entertainment during 2006 season. Commissioner Spane commented that in the past the Symphony had received funding support from Viejas Entertainment, and Viejas had absorbed the major expense of constructing the stage and rigging. Commissioner Spane requested and received clarification regarding the District's financial support of Symphony for the upcoming summer concert season. Ms. McCormack explained that the Fee for Service and Marketing Sponsorship Committee had recommended waiving all permit fees and allocating a \$50,000 award; and the Symphony could utilize the cash allocation for constructing the stage or for any other purpose as they deem necessary to support the concerts on Tideland properties.

Commissioner Black requested and received clarification as to whether staff had contacted the small businesses on Tideland properties to survey the economic impact to their businesses that may be related to a decrease in attendance that equaled approximately 120,000 less visitors. Ms. McCormack stated staff had not conducted such a survey. Sharon Cloward of the Port Tenant's Association stated that Port tenants reported that their business was down because of the decrease in attendance.

Commissioner Valderrama requested and received confirmation from Ms. McCormack that the \$50,000 security deposit was in prior year's contracts.

The following individuals addressed the Board regarding the item: Gary Smith, San Diego Downtown Residents Group, supported issuing the Tidelands Use and

Occupancy Permit for the 2008 season and urged staff to consider permanently installing basic utilities at the venue. Ward Gill, San Diego Symphony, addressed the Board and he requested that commissioners reconsider one portion of the staff recommendation to increase the per ticket fee to \$1.00 and maintain the 2007 level of seventy-five cents per ticket in light of the following circumstances: a year over year decrease of \$10,000 in the District's Fee for Service and Marketing Sponsorship Committee cash award and the financial burden required to construct the venue that will be solely incurred by the Symphony due to the loss of the Viejas Entertainment partnership.

Commissioner Cushman requested and received clarification from Mr. Smith that the expense for the sound monitoring is approximately \$7,000 to \$9,000.

Commissioner Rios requested information regarding the attendance figures and the percentage of unsold tickets during the 2007 season. Mr. Smith stated that approximately 3,000 tickets are available per performance, and the average attendance is approximately 2,500-2,600. Mr. Smith stated that while the specific number of unsold tickets varied per performance at each performance approximately 400 ground/picnic area tickets did not result in revenue. The loss of ticket revenue was either a result of the ticket being complimentary, donated or it may have gone unsold.

Commissioner Spane recommended that the Board maintain the rent level of a seventy-five cent per ticket fee for the upcoming season.

Commissioner Black stated that she supported Commissioner Spane's recommendation to maintain the seventy-five cent per ticket fee for the 2008 season. Commissioner Black stated that the Commissioners had to balance the impact of the concert's sound levels on a community's quality of life with the core value of supporting endeavors that positively contribute to the District's revenue.

Commissioner Valderrama requested and received clarification from Ms. McCormack regarding the original agreement with the Symphony. Ms. McCormack explained that when the Symphony was partnering with Viejas Entertainment the five year contract included an annual ticket fee increase to balance the competition with Humphrey's Concerts by the Bay. Ms. McCormack remarked that as a result of the Viejas partnership ending, and based on the type of concerts sponsored by the Symphony, the staff no longer saw a direct competition.

Chairman Bixler requested and received clarification from Mr. Gill regarding the cost to install the electrical services at the venue. Mr. Gill replied that the costs to install

the electricity, water and restroom facilities were approximately \$100,000 per year. Mr. Gill encouraged the Board to consider permanently installing those types of basic amenities at the site. Chairman Bixler requested that the Board consider directing staff to explore the costs to permanently install the electrical conduit and basic water services at the South Embarcadero Park.

Commissioner Cushman concurred with Commissioner Black's comments, and due to the financial impact to the Symphony as a result of the departure of Viejas Entertainment he also supported the seventy-five cent per ticket fee. Commissioner Cushman explained that in his opinion the Summer Pops needed a permanent home; he further stated that staff, teamed with members of the community, had been exploring alternative locations for a venue. Commissioner Cushman explained that based on the type of concerts and the level of sound at symphonic concerts he would support removing the sound monitoring requirement and save the Symphony approximately \$7,000 to \$9,000 per season. Commissioner Cushman stated the Board reserved the right to require sound monitoring in the future.

Commissioner Spane expressed his concerns regarding the sound levels at prior concerts and acknowledged that in the past the loud performances on the District Tidelands impacted the quality of life for the residents of Coronado.

Pete Litrenta addressed the Board during the public hearing and requested the Board consider that the Symphony, as a not-for-profit arts organization, should be treated in a similar fashion to the USS Midway or the Maritime Museum when the Board and staff are considering applying a per ticket fee as part of the rent agreement.

Bruce Hollingsworth, Executive Director, explained that the sound monitoring was included in the Mitigated Negative Declaration as a sound mitigation measure. Mr. Hollingsworth also addressed Mr. Litrenta's comments, and due to the fact that the USS Midway and the Maritime Museum were required to be located on the water and the Symphony could perform anywhere, the staff does feel there could be a distinction made between the organizations.

No other members of the public wished to speak, and Chairman Bixler requested a motion to close the public hearing.

On motion of Commissioner Spane, seconded by Commissioner Black, the Board voted to close the public hearing, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Spane made a motion to accept the staff recommendation with the exception of charging seventy-five cents per ticket versus \$1 per ticket. Commissioner Black seconded the motion.

On motion of Commissioner Spane, seconded by Commissioner Black, the Board, approved **Resolution 2008-62**, finding that the 2008 Symphony Summer Pops Embarcadero Marina Park South Tidelands Use and Occupancy Permit is in substantial conformance with the Final Subsequent Mitigated Negative Declaration Adopted by the Board on March 13, 2007, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Black left the dais at 2:14 p.m. and returned at 2:15 p.m.

Commissioner Cushman left the dais at 2:14 p.m. and returned at 2:15 p.m.

ACTION AGENDA

RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN SAN DIEGO GAS & ELECTRIC AND THE SAN DIEGO UNIFIED PORT DISTRICT ON SUSTAINABLE ENERGY MANAGEMENT

Agenda Item 31. Chairman Bixler requested that in lieu of the staff report the item begin with statements from the public.

The following members of the public addressed the Board: Ed Plant, San Diego Port Tenants Association, urged the Board to support the staff recommendation; Laura Hunter, Environmental Health Coalition (EHC), addressed the Board and acknowledged the District's commitment to sustainable energy management, she presented amendments to the proposed Memorandum of Understanding, and encouraged the Board to implement mandates for Port Tenants.

Commissioner discussion ensued. Chairman Bixler requested that David Merk, Director, Environmental Services, address the EHC's suggested amendments. Mr. Merk stated that the EHC's amendments focused on implementing a mandatory program, and at this time staff was pursuing a voluntary implementation program. Mr. Merk acknowledged the additional points submitted by the EHC. Bruce Hollingsworth, Executive Director, explained the "whereas regarding the South Bay power plant" included in the EHC amendments may not be appropriate due to prior agreements currently held with the District and LS Power.

Commissioner Spane stated that he was in support of the MOU and further stated that environmental sustainability matters are in the media daily and it would benefit the District to proactively address them.

On motion of Commissioner Rios, seconded by Commissioner Spane, the Board, approved **Resolution 2008-63**, Authorizing a Memorandum of Understanding between San Diego Gas & Electric and the San Diego Unified Port District on Sustainable Energy Management, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None

Irene McCormack acknowledged the efforts of several staff members at SDG&E to move the MOU forward.

Commissioner Cushman stated that based on reports he has received from the Port Tenant's Association, Sustainable Energy Management is an opportunity for tenants to save money. Commissioner Cushman stated that SDG&E has committed a full time staff member to provide assistance to the Port Tenants and he supported implementing a voluntary program.

Chairman Bixler also explained that the Board supported, and would continue to encourage new developers and/or potential tenants, to consult with the energy team early in their planning phase.

RESOLUTION AUTHORIZING FUNDING IN AN AMOUNT NOT TO EXCEED \$837,500 AND ESTIMATED DISTRICT SERVICES IN THE AMOUNT OF \$660,000 FOR FISCAL YEAR 2009 MARKETING AND FEE FOR SERVICE SPONSORSHIP PROGRAM AND WAIVING BPC POLICY NO. 110 WITH RESPECT TO THE SELECTION PROCESS FOR THOSE AGREEMENTS BETWEEN \$75,000 AND \$125,000

Agenda Item 32. Jackie Williams, Manager of Marketing, addressed the Board with a presentation regarding the marketing and fee for service sponsorship program. (A copy of the staff report and presentation are on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Rios commended staff for their comprehensive review of the applications and their support of the thirty members of the Marketing Advisory Committee.

Commissioner Spane requested and received information regarding the year over year budget growth of the marketing and fee for service sponsorship program. Ms. Williams reviewed the prior year's budget. Commissioner Spane requested and received confirmation from Bruce Hollingsworth, Executive Director, that if necessary staff would locate the additional \$80,000 for the programs recommended by the Marketing and Fee for Service Sponsorship Committee, and if the staff could not locate the additional funds the staff would return to the Board for further direction. Rita Vandergaw, Director, Marketing explained that the following programs comprised the amount requested that exceeded the original budget: \$25,000 was allocated to the Red Bull Air Races; \$25,000 was allocated for additional funding for Fleet Week; a new multicultural FAM trip; and an increase to the Balboa Park marketing cooperative. Commissioner Spane requested that in the future staff prepare a report regarding the Marketing and Fee for Service Sponsorship Committee program's rate of return.

Ms. Williams explained that the total budget under consideration by the Board includes a deduction of \$25,000 for American Society of Association Executives (ASAE) and takes into account that Berkman, one of the requestors, declined the actual recommendation of \$20,000. Ms. Williams stated that staff recommended the reallocation of \$40,000 for ASAE that resided in the Board Authorized FY07/08 Budget through Marketing Fee for Service with the San Diego Convention and Visitors Bureau. Ms. Williams stated that in exchange for the \$40,000, the District and ASAE will work out some deliverables that can be measurable such as tenant opportunities that include show casing port tenant products as an ASAE tradeshow.

Commissioner Valderrama requested that in the future the Board be provided a year over year comparison regarding the budget and the actual approved expenditure.

Chairman Bixler requested and received confirmation that in the upcoming year staff would work with the Board to quantify and manage the actual costs of the fees for service portion of the program.

On motion of Commissioner Rios, seconded by Commissioner Spane, the Board approved **Resolution 2008-64**, Authorizing Funding in an amount not to exceed \$812,500 and estimated District services in the amount of \$660,000 for Fiscal Year 2009 Marketing and Fee For Service Sponsorship Program and Waiving BPC Policy No. 110 with respect to the selection process for those Agreements between \$75,000 and \$125,000, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Valderrama, supported by Chairman Bixler, stated that the committee members should be aware of the allocated budget for the Marketing and Fee for Service Sponsorship program and the Financial Assistance Program, and consider those numbers when making recommendations to the Board.

FINANCIAL ASSISTANCE PROGRAM

Agenda Item 33A. The following member of the public addressed the Board: Maxine Mahon, California Ballet Company requested that consideration be given regarding the date of their performance and the required timeline set for receiving the recommended funding. Commissioner Cushman stated and confirmed with staff that an accommodation could be arranged.

Commissioner Valderrama made a motion to support the committee recommendation, with the exception of the Elite Disabled Veterans Business Enterprise (Elite DVBE). Commissioner Rios seconded the motion.

On motion of Commissioner Valderrama, seconded by Commissioner Rios, the Board, approved **Resolution 2008-65**, Adopting the Financial Assistance Program Committee's recommendations for funding the Port of San Diego Financial Assistance Program for Fiscal Year 2008-2009 in an amount not to exceed \$334,840, by the following vote: Yeas-Bixler, Cushman, Najera, Rios, Spane, Valderrama; Nays-Black; Excused-None; Absent-None; Abstained-None.

Commissioner Valderrama explained that he had concerns regarding the Elite Disabled Veterans Business Enterprise (Elite DVBE) events. He stated that he supported the event on the USS Midway and did not support the golf tournament portion of the event. He also expressed his concern regarding awarding \$25,000, a sum that would contribute to exceeding the budget of the Port's Financial Assistance Program.

Commissioner Spane explained that he supported the Elite DVBE events.

Commissioner Rios requested and received clarification from Jim Hutzelman, Assistant Director, Community Services, that the Elite DVBE had made requests for funding in prior years.

Commissioner Cushman stated that he was in support of the portion of the event being held on the USS Midway, and that it was not proper for the District to specifically support a golf tournament.

Commissioner Black agreed that supporting the golf tournament was not an appropriate use of District funds, and in light of the efforts by Elite DVBE to encourage the employment of veterans, she made a motion that the Board approve funding in the amount of \$12,500, and the award be designated for the specific use on the celebration event on the USS Midway.

On a motion by Commissioner Black, seconded by Commissioner Cushman, the Board approved **Resolution 2008-65**, awarding Financial Assistance Program funds of \$12,500 to the Elite DVBE for funding the celebration event outlined in their application on the USS Midway, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Valderrama; Nays-Spane; Excused-None; Absent-None; Abstained-None.

Agenda Item 33B. Harry Mathis, Chairman, San Diego Vintage Trolley, Inc. (SDVTI), addressed the Board regarding the request for funding for the San Diego Vintage Trolley Restoration Project which is being undertaken by SDVTI, a non-profit subsidiary of the of the Vintage Trolley Project. (A copy of the presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Chairman Bixler requested clarification from Mr. Mathis regarding his organizations intentions regarding any requests for additional funds in the future. Mr. Mathis explained that the funding request under consideration was for one year, and his organization may return in subsequent years, and he requested that the Commissioners see funding by the District as an investment. Chairman Bixler expressed his concerns regarding the business plan for the Vintage Trolley Project and spoke to the likelihood of the service being a profitable venture. Mr. Mathis explained that in general all transit systems in major cities operate with a subsidy.

Commissioner Cushman made a motion to accept the staff's recommendation and award \$50,000 to the project.

Commissioner Spane stated that while he supported the opportunity to promote the District by advertising on the trolley cars, he also expressed his concern regarding the District subsidizing a business that he stated is arguably not on Tidelands and requested further additional discussion before supporting the motion.

Bruce Hollingsworth, Executive Director, addressed Commissioner Spane's concern and stated that the service would encourage visitor ridership along the waterfront, improve visitor access to the Tidelands, and provide Bayside service from an area near the new Hilton Hotel, the Convention Center and on to the North

Embarcadero. Mr. Hollingsworth also stated that by supporting the new service it may add one more item that can help mitigate some of the concerns cited by the Coastal Commission staff regarding traffic and parking around the new Lane Field development.

Commissioner Valderrama stated his only concern with the Vintage Trolley program was that by supporting the project the District could be perceived as sole sourcing transportation services.

Mr. Hollingsworth stated that due to the fact that only rail vehicles can run on the existing lines, the restored trolley cars would enhance the existing service. Mr. Hollingsworth stated that in staff's opinion it would not be sole sourcing because it would not directly compete with the other hard wheel transportation service alternatives.

Commissioner Rios supported the proposal and explained that she would like to see a 5-year business plan developed.

Commissioner Najera requested and received clarification from Mr. Mathis regarding the status of the project with the San Diego Metropolitan Transit System (MTS). Mr. Mathis stated that the MTS Board supported the program and would fund 100% of the operational costs; however, funding outside of MTS was required for the restoration of the trolley cars to which this grant would be utilized.

Gary Smith, San Diego Downtown Residents Group, addressed the Board and supported the project as a means to positively impact the traffic and parking issues facing downtown San Diego as other developments come on line.

Commissioner Najera left the dais at 3:08 p.m. and returned at 3:10 p.m.

Commissioner Cushman supported the project as a means to address transportation and also stated that by supporting the project, the District could also address some of the Coastal Commission's concerns regarding transportation, traffic, parking and the downtown shuttle concept, as the Coastal Commission members consider the overall North Embarcadero Visionary Plan.

Commissioner Cushman reiterated his previous motion to award a \$50,000 grant in matching funds to support the project.

Chairman Bixler requested and received confirmation from Mr. Mathis that the District would receive sponsorship credit to be worked between MTS and the District.

Commissioner Valderrama requested and received clarification from Mr. Hollingsworth that the project would be funded in the FY2009 operating budget.

Commissioner Black seconded the motion.

On motion of Commissioner Cushman, seconded by Commissioner Black, the Board, approved **Resolution 2008-66**, Adopting Staff's Recommendation to Provide Matching Funds in Support of the San Diego Vintage Trolley Project in an amount not to exceed \$50,000, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Nancy Graham, President/COO of Centre City Development Corporation (CCDC), stated for the record, that at a meeting with the City of San Diego and representatives from SANDAG, a decision was made to resurrect the task force for the downtown shuttle concept.

DISCUSS NORTH EMBARCADERO VISIONARY PLAN PHASE ONE, WEST BROADWAY AND PROVIDE DIRECTION TO STAFF

Agenda Item 34. Linda Scott, Capital Project Manager, Engineering and Construction; and Christine Anderson, Vice President, Operations and COO; addressed the Board regarding the North Embarcadero Visionary Plan Phase One. (A copy of the presentation and the staff report is on file in the Office of the District Clerk.)

Gary Smith, San Diego Downtown Residents Group, addressed the Board and supported the staff recommendations.

Commissioner discussion ensued. Commissioner Black stated that there were many benefits that would be derived from completing the project and she supported the staff recommendation.

Commissioner Najera expressed his concern that the plans that were being put forth should also address all of the immediate, and future infrastructure needs, that may be required to facilitate public works and cold ironing needs. Ms. Scott stated staff has consulted with the cold ironing team and the City of San Diego to address those types of issues. Ms. Scott stated that staff understood the Commissioner's concerns and had reviewed and revised the schedule of a number of the amenities within the project to avoid a duplication of efforts and to maximize the budget. Commissioner Najera also addressed the letter prepared by CCDC to the Navy regarding the development and encouraged Ms. Graham to utilize the District for support regarding coordination regarding easements and other such matters.

Chairman Bixler requested and received confirmation that the installation of the waterline was a project to be completed by the City of San Diego.

Commissioner Cushman expressed his concerns regarding the need to avoid delays and encouraged staff to move forward and resolve any issues in a timely manner to assure that work on the project breaks ground as quickly as possible. Commissioner Cushman made a motion to support the staff recommendation. The motion was seconded by Commissioner Rios.

On motion of Commissioner Cushman, seconded by Commissioner Rios, the Board, approved the staff recommendation of the consideration of the following modifications to the original Phase One construction project (Harbor Drive from West Broadway to B Street, with transitions): 1) Include West Broadway, with the crest lowered, to significantly improve the aesthetics of the Broadway Great Hall; the drainage at Pacific Highway and West Broadway; and the cross-section of the Harbor Drive esplanade; 2) Defer construction of permanent improvements to the promenade in front of the B Street Pier until the completion of the new Cruise Ship Terminal; 3) Extend the promenade south to the former Navy Pier to provide symmetry on each side of the Broadway Pier, and to link the new improvements with the South Embarcadero, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

DISCUSSION OF STATE LEGISLATION OF INTEREST TO THE PORT OF SAN DIEGO, STATUS REPORT AND POSSIBLE DIRECTION TO STAFF IF ANY

Agenda Item 35. Dan Wilkens, Executive Vice President, addressed the Board regarding the state legislation of interest to the District. Mr. Wilkens introduced Ben Clay, Carpi and Clay and Irene McCormack, Director of Communications and Government Affairs. (A copy of the staff report is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Valderrama requested and received clarification regarding the status of Senate Bill 1295 that was introduced by Senator Denise Moreno-Ducheny. Mr. Wilkens explained that the bill was introduced and that it failed to make it out of the Senate Natural Resources committee and the bill could be reconsidered in the future. Mr. Clay explained that while the Senator Moreno-Ducheny experienced resistance from a variety of organizations, he did anticipate that Senate Bill 1295 bill would be reconsidered. Mr. Wilkens requested that the Board authorize staff to support the bill.

On motion of Commissioner Cushman, seconded by Commissioner Valderrama, the Board, approved the staff recommendation to support Senate Bill 1295, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Commissioner Valderrama stated he would bring a letter of support for Senate Bill 1295 to Senator Moreno-Ducheny.

Commissioner Spane requested and received confirmation from Mr. Wilkens that the airport, and not the District, would receive the revenue from any rental car fee surcharge included in Senate Bill 1510 if the bill passed.

On a motion by Commissioner Cushman, seconded by Commissioner Valderrama, the Board directed staff to work with the State Lands Commission, the US Navy and Assembly member Saldana regarding Assembly Bill 1832 and report back to the Board with any necessary report and recommendation, in 30 days by the following vote: Yeas-Bixler, Black, Cushman, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

Ms. McCormack updated the Board regarding the status of a letter sent by California Governor Arnold Schwarzenegger and the Governor of Hawaii regarding any changes to the cruise line service rules from the ports of San Diego, Los Angeles and San Francisco to Hawaii.

REVIEW AND CONSIDERATION OF PROPOSED BOARD AGENDA FOR MEETING OF MAY 6, 2008

Agenda Item 36. Commissioner discussion ensued. Commissioner Spane requested that the nomination and approval of Board member(s) representation on the Public Art Committee be added to the June 10, 2008. Bruce Hollingsworth, Executive Director, acknowledged the request.

Chairman Bixler requested that the staff present a report regarding interpreting services at Board of Port Commissioner meetings.

Mr. Hollingsworth requested that the Board consider staff's request to add a discussion regarding the initiative entitled "The Port of San Diego Marine Freight Preservation and Bayfront Redevelopment Initiative" to the June 10, 2008 agenda.

On motion of Commissioner Cushman, seconded by Commissioner Spane, the Board approved the placement of the proposed agenda of June 10, 2008, by the following vote: Yeas-Bixler, Black, Cushman, Najera, Rios, Spane, Valderrama; Nays-None; Excused-None; Absent-None; Abstained-None.

POINT LOMA MARINA, LLC

ORDINANCE GRANTING AMENDMENT NO. 1 TO OPTION AGREEMENT WITH POINT LOMA MARINA, LLC.

RESOLUTION GRANTING CONCEPT APPROVAL TO POINT LOMA MARINA, LLC FOR PARKING STRUCTURE PROCESS

Agenda Item 37AB. Chairman Bixler announced the items would be continued to a future Board meeting.

RESOLUTION GRANTING CONCEPT APPROVAL TO PORT CORONADO ASSOCIATES FOR RESTAURANT IMPROVEMENTS FOR TORREY POINT, INC. DBA THAI CAFÉ

Agenda Item 38. Chairman Bixler announced the item no longer required Board action.

PRESENTATION AGENDA CONTINUED

STAFF UPDATE ON "SAFER ALTERNATIVES TO COPPER ANTIFOULING PAINTS" PROJECT

Agenda Item 39. Karen Holman, Senior Environmental Specialist, Environmental Services, addressed the Board with an update on the progress to date regarding the EPA Grant project designed to identify alternatives to copper antifouling paints. Ms. Holman introduced Dr. Katy Wolf, Director of the Institute for Research and Technical Assistance and Stephanie Bower from the District. (A copy of the staff report and presentation is on file in the Office of the District Clerk.)

Commissioner discussion ensued. Commissioner Cushman stated that he was encouraged by the progress that had been made to date. Commissioner Cushman expressed his concerns regarding the development of a new paint solution in a timely way, and he requested that staff prepare a report on the status of what had been accomplished to encourage the development of new bottom paints, and what steps have been made to develop a financial prize or plans for funding research grants.

Ms. Holman stated that a number of the paints in the study are new, untried and untested paints.

Commissioner Spane encouraged that all the paints under consideration be reviewed and that the Environmental Committee members were aware of Commissioner Cushman's concerns regarding the urgent need for the development of new bottom paints.

Commissioner Black explained that the Environmental Committee was mandated to fund projects that were beyond compliance.

OFFICER'S REPORT

Agenda Item 40. In accordance with BPC Policy 110, the following change orders, executed by the Executive Director, were reported:

- a) Change Order No. 8 for (\$41,316.00) and 20 Calendar Days to Contract No. 2005-16R with Chula Vista Electric Co. for Intrusion Detection System Tenth Avenue Marine Terminal, San Diego, California.
- b) Change Order No. 9 for \$6,200.00 and 30 Calendar Days to Contract No. 2005-16R with Chula Vista Electric Co. for Intrusion Detection System Tenth Avenue Marine Terminal, San Diego, California.
- c) Change Order No. 33 for (\$72,207.00) and 4 Calendar Days to Contract No. 2005-20 with Reyes Construction, Inc. for Former Navy Pier Rehabilitation, San Diego, California.
- d) Change Order No. 9 for \$21,483.20 and 3 Calendar Days to Contract No. 2006-11 with R.E. Staite Engineering, Inc. for Fender Pile Replacement for FY07 and FY08, Various Locations, San Diego and National City, California.
- e) Change Order No. 5 for \$4,896.00 and 15 Calendar Days to Contract No. 2006-13 with 3D Enterprises, Inc. for Cannery Worker Tribute, San Diego, California.
- f) Change Order No. 2 for \$2,466.48 and 0 Calendar Days to Contract No. 2006-20 with Hazzard Construction Company for Shelter Island Drive Pavement Repairs, San Diego, California.
- g) Change Order No. 2 for \$2,130.00 and 21 Calendar Days to Contract No. 2007-27 with Hobbs Electric for Harbor Police Headquarters Electrical System Upgrade, San Diego, California.
- h) Change Order No. 1 for \$11,000.00 and 0 Calendar Days to Contract No. 2007-07 with Falcon Construction Company for Repair Roll-Up Doors at Warehouse C and Transit Shed No. 1, Tenth Avenue Marine Terminal, San Diego, California.

- i) Change Order No. 1 for \$25,146.00 and 30 Calendar Days to Contract No. 2005-15 with HAR Construction, Inc. for 10th Avenue Marine Terminal Security Lighting, San Diego, California.
- j) Change Order No. 1 for \$23,984.37 and 0 Calendar Days to Contract No. 2007-15R with Romero General Construction Corp. for Administration Building Annex Office Improvements, San Diego, California.
- k) Change Order No. 2 for \$13,576.18 and 14 Calendar Days to Contract No. 2007-15R with Romero General Construction Corp. for Administration Building Annex Office Improvements, San Diego, California.
- l) Change Order No. 6 for \$0.00 and 15 Calendar Days to Contract No. 2006-13 with 3D Enterprises, Inc. for Cannery Worker Tribute, San Diego, California..

PRESIDENT'S REPORT

Agenda Item 41. None.

BOARD COMMITTEE REPORTS

Agenda Item 42. None.

COMMISSIONER COMMENTS

Agenda Item 43. None.

Chairman Bixler announced the Board would reconvene in Closed Session.

CLOSED SESSION

Agenda Item 7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Government Code Section 54956.8

Property: Fifth Avenue Landing/Spinnaker Hotel located on the south side of Convention Way and east of Marina Park Way, San Diego

Negotiating Parties: Fifth Avenue Landing, LLC, Raymond Carpenter and Arthur Engel
Randa Coniglio, SDUPD

Under Negotiation: Price and Terms

Agenda Item 8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Government Code Section 54956.8

Property: Lane Field located at the northeast corner of Harbor Drive and Broadway, San Diego

Negotiating Parties: Lane Field Developers, LLC, Jerome Trammer
Karen Weymann, SDUPD

Under Negotiation: Price and Terms

There was no other formal or reportable action, pursuant to Government Code Section 54950 et seq to report from the Closed Session.

At the conclusion of the Closed Session Chairman Bixler adjourned the meeting.

April 8, 2008

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Secretary, Board of Port Commissioners
San Diego Unified Port District

ATTEST:

Clerk of the San Diego Unified Port District